

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

RICHARD HALL,

Plaintiff,

v.

CITY OF DEPOE BAY,

Defendant.

Case No. 6:17-cv-00479-MK
ORDER

AIKEN, District Judge:

Magistrate Judge Jolie Russo filed her Findings and Recommendation (“F&R”) (doc. 46) recommending that defendant’s Motion for Summary Judgment (doc. 17) should be DENIED. The matter is now before me. *See* 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b).

When either party objects to any portion of a magistrate judge’s F&R, the district court must make a *de novo* determination of that portion of the magistrate judge’s report. *See* 28 U.S.C. § 636(b)(1); *McDonnell Douglas Corp. v. Commodore Business Machines, Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981), *cert denied*, 455 U.S. 920 (1982).

Plaintiff filed timely objections to the F&R (doc. 48), and defendant filed a timely response to those objections (doc. 52). Thus, I review the F&R *de novo*.

Plaintiff avers that Judge Russo erred in ordering an adverse inference instruction to the fact-finder in this case as a sanction for spoliation of evidence. Specifically, Judge Russo opined that:

[A]lthough dismissal is inappropriate in this case, the Court orders an adverse inference instruction based on the following findings: (1) plaintiff had control over the Siamez and an obligation to preserve the vessel at the time it was destroyed; (2) plaintiff authorized the destruction of the Siamez with a sufficiently culpable state of mind because he had notice of potential relevance of the Siamez to this litigation; and (3) the Siamez was relevant evidence to the defense of plaintiff's claim because without the vessel defendant is prejudiced in defending against plaintiff's claim.

F&R at *15. (internal quotations omitted.)

I agree with Judge Russo's analysis of the issue and her findings outlined above. I also conclude that she was correct in her use of the factors outlined in *Justice v. Rockwell Collins, Inc.* and her holding that those factors are satisfied in this case. 117 F. Supp.3d 1119, 1130–31 (D. Or. 2015), *aff'd*, 2017 WL 6559788 (9th Cir. 2017). In sum, I find no error in Judge Russo's F&R.

Thus, I adopt Magistrate Judge Russo's F&R (doc. 46) in its entirety. Accordingly, the Motion for Summary Judgment (doc. 17) is DENIED.

IT IS SO ORDERED.

Dated this 25th day of September, 2018.



Ann Aiken
United States District Judge